NO. 90-828

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

MELVIN R. KURR,

PETITIONER,

-VS-

VILLAGE OF BUFFALO GROVE, ET AL.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF

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Petitioner, Pro se

ARGUMENT

Question 1

The respondents claim the Water and Sewer Agreement requirement the petitioner must grant to Village agents the authority to conduct warrantless "free access" searches and seizures, without any kind of notice, of the petitioner's home is reasonable because such activities "are necessary to the operation of a water and sewer system," (see Brief in Opp. p. 6). However, such reasoning is seriously flawed.

First, if warrantless "free access" entries are "necessary" why are village residents customers entitled to demand "presentation of a warrant," (see Petition for Writ, pp. 19 & 27).

Secondly, even if free access is "necessary" it does not negate the right of the petitioner to demand a warrant from Village agents. This Court has made this

point clear in Michigan v. Tyler, 436 US 499 (1978) stating:

> "Searches for administrative purposes ... are encompassed by the Fourth Amendment. [E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant. The showing of probable cause necessary to secure a warrant may very with the object and intrusiveness of the search, but the necessity for the warrant persists," (emphasis added), (citation and footnote omitted), 436 US at 506.

The respondents also suggest two cases cited in the Petition [Payton v. New York, 445 US 573 (1980), and Steagald v. United States, 451 US 204 (1981)], have no relevance to the Fourth Amendment issue in the instant cause because both cases deal with criminal as opposed to administrative warrantless searches, (Brief in Opp. pp. 6-7).

However, in Payton Justice WHITE in his dissenting opinion cites at 445 US 620 Marshall v Barlow's Inc., 436 US 307 (1978) and Camara v. Municipal Court, 387 US 523

(1967). And Justice REHNQUIST's dissenting opinion in Steagald 451 US 225-226 also cites Barlow's and Camara. Both Barlow's and Camara concerned the necessity of a search warrant for administrative purposes. Further, there are numerous administrative search warrant cases that cite criminal cases [see, e.g., Michigan v. Tyler, supra, 436 US at 509 citing Coolidge v. New Hampshire, 403 US 443 (1971)]. So, it is clear that citing a criminal case in an administrative case; and vice versa, is a totally acceptable practice. For the respondents to even imply Village agents do not need to obtain a warrant to enter the petitioner's home merely because he is not suspected of a crime is truly absurd.

> "To say a man suspected of a crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity." District of Columbia v. Little, 178 F2d 13, 17 (1949), aff'd on other grounds, 339 US 1 (1950).

Question 2

Contrary to the respondents proposition that the petitioner did not raise an equal protection claim in the district court, the petitioner did raise the claim in the district court, (see Petition for Writ, pp. 27-29). However, the district court in its memorandum opinion and order failed to state why residents may demand "presentation of a warrant" while the petitioner must allow "free access." And as explained in the Petition, although the failure of the district court to address the equal protection issue was not a distinct question for review by the appeals court, the petitioner's appeals court brief made it plain that such non-decision by the district court was sought for review.

Question 3

The Petition for Writ explained the Village failed to inform the petitioner that his utility service was subject to termi-

nation by the Village. The only notice the petitioner received concerning possible termination of service was from Chevy Chase, and not from the Village, (Petition p. 32). Nor was the petitioner afforded a hearing before an official empowered to entertain the petitioner's complaint that the Water and Sewer Agreement contained unfair provisions.

Conclusion

For reasons set-forth in the Petition for Writ of Certiorari and this Reply Brief the petitioner prays that this Honorable Court grant the Writ to correct the errors committed by the district and appeals courts.

RESPECTFULLY SUBMITTED,

MELVIN R. KURR,
Petitioner, pro se